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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 21, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

EX PARTE

Re: GN. Docket No. 93-252

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to notify you that Charles M. Meehan and Sean A. Stokes, representing the Utilities Telecommunications Council (UTC), met today with Chairman Reed Hundt and Karen Brinkmann, to discuss the Commission's proposals in GN Docket 93-252 to change the regulatory treatment of mobile services.

The substance of UTC's presentation concerned points raised in its written comments in this docket; in particular, the need to avoid reclassifying shared-use or limited-use private carrier systems as commercial mobile services. UTC also discussed its concerns that the FCC's regulatory parity decision not create an adverse precedent for the regulation of fixed communications services. Finally, UTC reviewed its proposal for a "Wireless Services Bureau" that would help to implement the regulatory changes to be adopted in this docket, as well as streamline the bureaucracy in a manner consistent with the National Performance Review. A written summary of the presentation provided to the Chairman is attached.

The original and one copy of this notice are being filed for inclusion in this docket.

Should any questions arise concerning this notification, please communicate with the undersigned.

Cordially yours,


Sean A. Stokes
Staff Attorney

cc: Karen Brinkmann
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**COMPETITIVE DEVELOPMENT OF NII
REQUIRES PRIVATE CARRIERS**

I. STIMULATING COMPETITIVE DEVELOPMENT OF THE NII

A. Utility Involvement In The Development Of The NII

Utilities are vitally interested in playing a role in the development of the National Information Infrastructure (NII) by acting as "catalysts for competition."

- o Utilities are implementing innovative communications systems that can be used to meet their "core" operating requirements; and
- o provide broadband capacity for the stimulation of competition by third party commercial telecommunication service providers.

B. The Administration Is specifically Looking To Utilities To Help Stimulate Competition In The NII

The Administration's vision of the National Information Infrastructure (NII), as outlined by Vice President Albert Gore, includes utilities. Consistent with the Administration's vision, there is a need to reduce regulations for telecommunications providers that lack market power.

II. THE FCC SHOULD BE WARY OF DEFINING PRIVATE SERVICES TOO NARROWLY

A. Private Carriage Regulations Must Be Retained

Regulations relating to the NII need to draw the proper regulatory distinctions between entities that operate primarily private or shared communications systems to meet the users' internal communications requirements, and entities that are primarily engaged in offering for-profit communications services on an indiscriminate basis to the general public.

"Private carrier" arrangements have provided utilities with the opportunity to make productive use of their reserve fiber optic or radio communications capacity for third-party development of competitive access networks and wide area communications systems.

This flexibility and the ability of utilities to actively participate in the development of the NII could be lost if all providers of telecommunications services or facilities are deemed "common carriers" and subjected to the same service obligations.

B. Private Carrier Regulations Enhance Competition

The private carrier regulations that have evolved over the past twenty years have helped to stimulate competition and allow for the more efficient use of spectrum and private telecommunications facilities.

Consistent with the desires of the Administration and Congress, private carrier regulations have allowed for the development of market-based competition.

C. Regulatory Parity Decision Could Impact Upon Treatment Of Other Telecommunications Services

The FCC's "regulatory parity" decision could have an unintended detrimental "spill-over" impact on the regulatory treatment of other types of telecommunications services, particularly with regard to the treatment of private microwave and fiber optics systems.

Accordingly, in attempting to specify the definition of what constitutes a commercial mobile service the FCC should confine its focus to those services for which regulatory parity is needed -- cellular-like services -- and should not narrowly define private mobile services. Specifically the FCC should:

- o Categorically exempt traditional private land mobile radio services in which licensees operate mobile radio systems solely for their own private, internal use.
- o Distinguish between "limited-eligibility" services that are available to a "substantial portion of the public" such as SMRs and private carrier paging services that have such broad eligibility service rules as to effectively allow them to provide service to almost anyone, and such "non-commercial" services that have significant eligibility requirements that restrict service to small or specialized user groups, e.g., the Power, Petroleum and Public Safety Radio Services.
- o Allow "non-commercial" private radio licensees to lease reserve capacity without being deemed to be acting on a for-profit basis for purposes of commercial mobile service classification.

III. THE FCC SHOULD ESTABLISH A "WIRELESS SERVICES BUREAU"

The FCC should establish a new "Wireless Services Bureau" that would be charged with greater responsibility for developing policy for non-broadcast radio services. Such a reorganization will be necessary to effectively carry out the provisions of the Budget Act, and will streamline policy, licensing and enforcement activities.

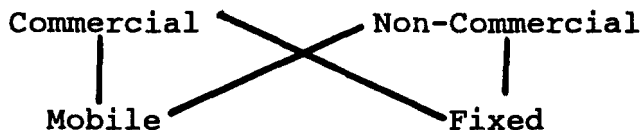
JANUARY 21, 1994

**SUGGESTED REORGANIZATION OF BUREAU FUNCTIONS
TO ACCOMMODATE THE "REGULATORY PARITY" PROVISIONS
OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993**

UTC presents its suggestions for FCC reorganization to accommodate the "regulatory parity" provisions of the Omnibus Budget Reconciliation Act of 1993 and to streamline FCC policy, licensing and enforcement activities in a manner consistent with Vice President Albert Gore's call to "reinvent government."

While the FCC's recently adopted Notice of Proposed Rulemaking, GN Docket No. 93-252, to adopt regulations implementing regulatory parity does not specifically propose a reorganization, UTC believes such reorganization will be necessary to effectively carry out the new legislation. Absent a reorganization the NPRM would create a duplication in decision-making authority that could result in the adoption of conflicting policies, and would almost certainly be an inefficient allocation of Commission staff and resources at a time when the FCC is looking to flatten staff and "do more with less."

Under the Budget Act, the FCC will be required to distinguish between "commercial mobile service providers" and other mobile radio service users. In addition, the Budget Act implicitly endorses the FCC's existing practice of distinguishing "mobile" radio services from "fixed" radio services. UTC has therefore attempted to develop an organizational structure that will balance these four criteria:



UTC recommends conversion of the Private Radio Bureau into a new "Wireless Services Bureau" that would be charged with greater responsibility for developing policy for most non-broadcast radio services. The Divisions within the Bureau would be as follows:

- a. Commercial Services Division -- to establish policies and rules on all "commercial" radio services, both fixed and mobile.
- b. Safety/Industrial Services Division -- to establish policies and rules on all "traditional" or "non-commercial" radio services, both fixed and mobile (including special radio services such as marine, aviation and amateur radio services).
- c. Licensing Division -- to perform the licensing function for all fixed and mobile radio services and to provide administrative support to the Bureau.
- d. Enforcement Division -- to provide enforcement of all fixed and mobile radio services, with the exception of tariffing or other "Title II" issues, which would be handled by the Common Carrier Bureau.

Under the proposed structure, "commercial services" and "safety/industrial" services would each have equal representation in the Bureau. This is particularly appropriate given the recent legislation authorizing the use of competitive bidding for the assignment of commercial radio services. Otherwise the interests of traditional private radio users that would comprise the safety /industrial category may not be given full voice in the disposition of existing and future spectrum allocations.

With respect to the fixed/mobile dichotomy, it is UTC's opinion that this distinction is only relevant from a licensing standpoint and that there is no need to have separate offices within the Bureau for the development of policy or rules on fixed or mobile services.^{1/} Moreover, from a practical standpoint many mobile services cannot be considered apart from the need for fixed radio links to interconnect the system. Therefore, the proposed table of organization only provides for separate "Fixed" and "Mobile" Branches within the Licensing Division.

^{1/} At present, for example, policies and rules for both private mobile and microwave are developed in the same branch within the Private Radio Bureau.

The new Bureau would be headed by a Chief, assisted by a Deputy Chief for Policy and Planning and an Assistant Bureau Chief for Management. For example, UTC envisions that the Deputy Chief for Policy and Planning would be responsible for balancing the competing demands of the "Commercial" and "Safety/Industrial Services" Divisions for spectrum allocations.

Although the Wireless Services Bureau would be primarily responsible for developing rules and policies for most non-broadcast radio services, certain related matters would remain vested in the Common Carrier Bureau. For example, review of tariffs, if any, filed by "commercial mobile service providers" or common carrier microwave operators, would be performed in the Common Carrier Bureau. Likewise, complaints brought under Section 208 would be resolved in the Common Carrier Bureau. This division of responsibility could also be beneficial if and when the issue of competition between landline and mobile services comes to the forefront.

UTC's proposed reorganization would appear to be consistent with the underlying goals of Commissioner Ervin Duggan's suggestion that the FCC consider the creation of a "Mobile Services Bureau."^{2/} However, by including both fixed and mobile radio services within the new bureau the FCC will achieve greater overall management efficiencies and will allow the Commission to take advantage of a trend that has already begun to take place among some radio services. For example, a convergence of regulations for fixed point-to-point microwave radio services can be seen in the FCC's recent adoption of regulations applying the same coordination and interference criteria for common carrier and private microwave licensees in the 4 GHz, 6 GHz, 10 GHz and 11 GHz bands.^{3/} Indeed, the Commission announced in that decision its intention to consolidate the rules for private and common carrier microwave.^{4/}

A single bureau would also greatly enhance the Commission's efforts to implement electronic data interchange (EDI), by allowing for the development of uniform protocols and standards.

^{2/} Concurring Statement of Commissioner Ervin Duggan, NPRM 93-252.

^{3/} Second Report and Order (Second R&O) in ET Docket No. 92-9, 8 FCC Rcd 6495 (1993).

^{4/} Second R&O in ET Docket No. 92-9, 8 FCC Rcd 6520.

Finally, such a reorganization will streamline FCC policy, licensing and enforcement activities in a manner consistent with Vice President Albert Gore's call to "reinvent government." The Licensing Division of the Private Radio Bureau is already responsible for common carrier microwave licensing as well as other "non-private" services. It only makes sense for the Commission to carry through with further consolidations to more efficiently handle the regulations and licensing of non-broadcast radio services.

**REORGANIZATION OF PORTIONS OF THE FCC'S COMMON CARRIER BUREAU AND PRIVATE RADIO BUREAU
INTO WIRELESS SERVICES BUREAU**

CURRENT FCC TABLE OF ORGANIZATION^{1/}

COMMON CARRIER BUREAU

- Enforcement Division
- Domestic Facilities Division
 - Domestic Radio Branch
 - Domestic Services Branch
 - Satellite Radio Branch
- Tariff Division
- Mobile Services Division
 - Legal Branch
 - Public Mobile Radio Branch
 - Cellular Radio Branch
 - Public Reference/Information Branch
- Accounting and Audits Division
- Industry Analysis Division
- Policy/Program Planning Division
- Asst. Bureau Chief/International
- International Facilities Division
- International Policy Division

PRIVATE RADIO BUREAU

- Land Mobile and Microwave Division
 - Rules Branch
 - Compliance Branch
 - Policy and Planning Branch
- Licensing Division
 - Land Mobile Branch
 - Special Services Branch
 - Microwave Branch
 - Data Services Branch
 - Support Services Branch
 - Consumer Assistance Branch
 - Fee and Mail Branch
- Special Services Division
 - Personal Radio Branch
 - Aviation and Marine Branch
 - International Staff

PROPOSED FCC TABLE OF ORGANIZATION

COMMON CARRIER BUREAU

- Enforcement Division
- Domestic Facilities Division
 - Domestic Services Branch
- Tariff Division
- Accounting and Audits Division
- Industry Analysis Division
- Policy/Program Planning Division
- Asst. Bureau Chief/International
- International Facilities Division
- International Policy Division

WIRELESS SERVICES BUREAU

- Chief^{2/}
- Deputy Chief Policy and Planning
- Assistant Bureau Chief for Management
- Commercial Services Division^{3/}
 - Legal Branch
 - Engineering Branch
 - Policy and Planning Branch
- Safety/Industrial Services Division
 - Legal Branch
 - Engineering Branch
 - Policy and Planning Branch
 - Personal Radio Branch
 - Aviation and Marine Branch
- Licensing Division
 - Fixed Services Branch
 - Mobile Services Branch
 - Special Services Branch
 - Data Services Branch
 - Support Services Branch
 - Consumer Assistance Branch
 - Fee and Mail Branch
- Enforcement Division

^{1/} The table is abridged to highlight only those bureaus/divisions that would be impacted by the proposed reorganization. All other bureaus and divisions would remain as they currently exist.

^{2/} The International staff would be an office within the Office of Bureau Chief.

^{3/} Tariff filings, if any, required of Commercial Service Providers would continue to be filed with the Tariff Division of the Common Carrier Bureau.